

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

GILBERT JAMES,

Plaintiff,

v.

Civil Action No. 3:11-cv-00221-REP

ENCORE CAPITAL GROUP, INC.,
MIDLAND FUNDING, LLC, MIDLAND
CREDIT MANAGEMENT, INC. and
EQUIFAX INFORMATION SERVICES LLC,

Defendants.

**ANSWER AND DEFENSES OF DEFENDANT
EQUIFAX INFORMATION SERVICES LLC**

Defendant, Equifax Information Services LLC (“Equifax”), by undersigned counsel, submits the following Answer and Defenses to Plaintiff’s Complaint (“Complaint”).

PRELIMINARY STATEMENT

In submitting its Answer and Defenses to the Complaint, Equifax Inc. denies any and all allegations contained in the unnumbered paragraphs and headings in the Complaint, and specifically denies any and all allegations in the Complaint that have not been otherwise specifically addressed herein, including any legal conclusions to which a response may be required. In response to the specific enumerated paragraphs in the Complaint, Equifax Inc. responds as follows:

ANSWER

In response to the specific enumerated paragraphs in the Complaint, Equifax responds as follows:

1. Equifax denies that Plaintiff can state a claim against Equifax under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §1681 *et seq.* or any other authority and denies that Plaintiff is entitled to the damages and other relief he seeks in this action as to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 1.

2. To the extent that Plaintiff can maintain this action, which Equifax denies, it admits that jurisdiction is proper in this Court.

3. Upon information and belief, Equifax admits the allegations in Paragraph 3.

4. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and, therefore, denies those allegations.

5. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and, therefore, denies those allegations.

6. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and, therefore, denies those allegations.

7. Upon information and belief, Equifax admits the allegations in Paragraph 7.

8. Equifax denies the allegations in Paragraph 8 as they pertain to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 8 and, therefore, denies those allegations.

9. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and, therefore, denies those allegations.

10. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and, therefore, denies those allegations.

11. Equifax is without knowledge or information sufficient to form a belief as to the

truth of the allegations in Paragraph 11 and, therefore, denies those allegations.

12. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and, therefore, denies those allegations.

13. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and, therefore, denies those allegations.

14. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and, therefore, denies those allegations.

15. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and, therefore, denies those allegations.

16. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and, therefore, denies those allegations.

17. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and, therefore, denies those allegations.

18. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and, therefore, denies those allegations.

19. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and, therefore, denies those allegations.

20. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and, therefore, denies those allegations.

21. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and, therefore, denies those allegations.

22. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and, therefore, denies those allegations.

23. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 and, therefore, denies those allegations.

24. Equifax denies the allegations in Paragraph 24 as they pertain to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 24 and, therefore, denies those allegations.

25. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and, therefore, denies those allegations.

26. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and, therefore, denies those allegations.

27. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 and, therefore, denies those allegations.

28. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and, therefore, denies those allegations.

29. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and, therefore, denies those allegations.

30. Equifax denies the allegations in Paragraph 30 as they pertain to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 30 and, therefore, denies those allegations.

31. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and, therefore, denies those allegations.

32. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 and, therefore, denies those allegations.

33. Equifax is without knowledge or information sufficient to form a belief as to the

truth of the allegations in Paragraph 33 and, therefore, denies those allegations.

34. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 and, therefore, denies those allegations.

35. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 and, therefore, denies those allegations.

36. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 and, therefore, denies those allegations.

37. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 and, therefore, denies those allegations.

38. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 and, therefore, denies those allegations.

39. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 and, therefore, denies those allegations.

40. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 and, therefore, denies those allegations.

41. Equifax denies the allegations in Paragraph 41 as they pertain to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 and, therefore, denies those allegations.

42. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 and, therefore, denies those allegations.

43. Equifax denies the allegations in Paragraph 43 as they pertain to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 43 and, therefore, denies those allegations.

44. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 and, therefore, denies those allegations.

45. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 and, therefore, denies those allegations.

46. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 and, therefore, denies those allegations.

47. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and, therefore, denies those allegations.

48. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 and, therefore, denies those allegations.

49. Equifax denies the allegations in Paragraph 49 as they pertain to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 49 and, therefore, denies those allegations.

50. Equifax denies the allegations in Paragraph 50 as they pertain to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 50 and, therefore, denies those allegations.

51. Equifax denies the allegations in Paragraph 51 as they pertain to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 51 and, therefore, denies those allegations.

52. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 and, therefore, denies those allegations.

53. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 and, therefore, denies those allegations.

54. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 and, therefore, denies those allegations.

55. Equifax states that LexisNexis, a third-party vendor utilized by Equifax in the collection of public records, reported the judgment as open. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 55 and, therefore, denies those allegations.

56. Equifax states that it utilizes LexisNexis as a third-party vendor in the collection of public records and that the judgment reported on Plaintiff's file as open. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 56 and, therefore, denies those allegations.

57. Equifax restates and incorporates its responses to all pervious paragraphs as though fully set forth herein.

58. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 and, therefore, denies those allegations.

59. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 and, therefore, denies those allegations.

60. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 and, therefore, denies those allegations.

61. Equifax restates and incorporates its responses to all pervious paragraphs as though fully set forth herein.

62. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 and, therefore, denies those allegations.

63. Equifax is without knowledge or information sufficient to form a belief as to the

truth of the allegations in Paragraph 63 and, therefore, denies those allegations.

64. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 and, therefore, denies those allegations.

65. Equifax restates and incorporates its responses to all pervious paragraphs as though fully set forth herein.

66. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66 and, therefore, denies those allegations.

67. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 and, therefore, denies those allegations.

68. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 and, therefore, denies those allegations.

69. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 and, therefore, denies those allegations.

70. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70 and, therefore, denies those allegations.

71. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 and, therefore, denies those allegations.

72. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72 and, therefore, denies those allegations.

73. Equifax restates and incorporates its responses to all pervious paragraphs as though fully set forth herein.

74. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74 and, therefore, denies those allegations.

75. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 75 and, therefore, denies those allegations.

76. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76 and, therefore, denies those allegations.

77. Equifax restates and incorporates its responses to all pervious paragraphs as though fully set forth herein.

78. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 78 and, therefore, denies those allegations.

79. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79 and, therefore, denies those allegations.

80. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 80 and, therefore, denies those allegations.

81. Equifax restates and incorporates its responses to all pervious paragraphs as though fully set forth herein.

82. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82 and, therefore, denies those allegations.

83. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 83 and, therefore, denies those allegations.

84. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 84 and, therefore, denies those allegations.

85. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 85 and, therefore, denies those allegations.

86. Equifax is without knowledge or information sufficient to form a belief as to the

truth of the allegations in Paragraph 86 and, therefore, denies those allegations.

87. Equifax restates and incorporates its responses to all pervious paragraphs as though fully set forth herein.

88. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 88 and, therefore, denies those allegations.

89. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 89 and, therefore, denies those allegations.

90. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 90 and, therefore, denies those allegations.

91. Equifax restates and incorporates its responses to all pervious paragraphs as though fully set forth herein.

92. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 92 and, therefore, denies those allegations.

93. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 93 and, therefore, denies those allegations.

94. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94 and, therefore, denies those allegations.

95. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 95 and, therefore, denies those allegations.

96. Equifax restates and incorporates its responses to all pervious paragraphs as though fully set forth herein.

97. Equifax denies the allegations in Paragraph 97.

98. Equifax denies the allegations in Paragraph 98.

99. Equifax denies that Plaintiff is entitled to any of the relief sought in his prayer for relief.

DEFENSES

Without assuming the burden of proof where it otherwise rests with Plaintiffs, Equifax pleads the following defenses to Plaintiff's Complaint:

FIRST DEFENSE

Plaintiff's damages, if any, were not caused by Equifax, but by other persons or entities for whom or for which Equifax is not responsible.

SECOND DEFENSE

At all times relevant herein, Equifax maintained reasonable procedures in its handling of Plaintiff's consumer credit file.

THIRD DEFENSE

Equifax has complied with the Fair Credit Reporting Act in its handling of Plaintiff's credit file and disputes, and is entitled to each and every defense stated in the Act and any and all limitations of liability.

FOURTH DEFENSE

Plaintiff's damages, if any, were caused by his own acts or omissions, or the acts or omissions of third parties other than Equifax.

FIFTH DEFENSE

Plaintiff has not sustained any damages.

SIXTH DEFENSE

Plaintiff has not alleged any injury in fact.

SEVENTH DEFENSE

Plaintiff's claim for punitive damages is barred or limited by the provisions of 15 U.S.C. §1681n.

EIGHTH DEFENSE

Plaintiff's Complaint seeks the imposition of punitive damages. Equifax adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided by the United States Supreme Court in the following cases: BMW v. Gore, 517 U.S. 559 (1996); Cooper Indus., Inc. v. Leatherman Tool Group, Inc., 532 U.S. 923 (2001) and State Farm v. Campbell, 538 U.S. 408 (2003).

NINTH DEFENSE

Plaintiff cannot establish the standard of willfulness under the Fair Credit Reporting Act as articulated by the Supreme Court in Safeco Insurance Co. of America v. Burr, 127 S. Ct. 2201 (2007).

TENTH DEFENSE

Plaintiff failed to mitigate his damages, if any.

ELEVENTH DEFENSE

Equifax denies each and every averment of Plaintiff's Complaint not specifically admitted in this Answer.

TWELFTH DEFENSE

Equifax asserts the terms and provisions of any of Plaintiff's bankruptcy filings and/or reaffirmation agreements.

THIRTEENTH DEFENSE

Equifax reserves the right to plead additional defenses that it learns of through the course of discovery.

WHEREFORE, having fully answered or otherwise responded to the allegations contained in Plaintiff's Complaint, Equifax Inc. prays that:

- (1) Plaintiff's Complaint be dismissed in its entirety and with prejudice, with all costs taxed against Plaintiff;
- (2) That Equifax Inc. be dismissed as a party to this action;
- (3) That this lawsuit be deemed frivolous and Equifax Inc. recover from plaintiff its expenses of litigation, including but not limited to attorneys' fees; and
- (4) That Equifax Inc. recover such other and additional relief, as the Court deems just and appropriate.

Respectfully submitted this 23rd day of June, 2011.

/s/

John W. Montgomery, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2011, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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/s/ _____
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